REMARKS

Claims 1, 2, 5-12, 15-22, 25-27 and 30 were pending in the application.

Claims 1, 2, 5-12, 15-22, 25-27 and 30 were rejected in the Office Action dated November 17, 2009 ("Office Action").

Claims 1, 11, 21, and 26 have been amended as set forth herein.

Claims 2, 12, 22, and 27 have been canceled herein.

Claims 1, 5-11, 15-21, 25-26 and 30 remain pending in this application.

Reconsideration of the claims is respectfully requested. The Applicants make the aforementioned amendments and subsequent arguments to place this application in condition for allowance. Alternatively, the Applicants make these amendments and offer these arguments to properly frame the issues for appeal. In this Response, the Applicants make no admission concerning any now moot rejection or objection, and affirmatively deny any position, statement or averment of the Examiner that was not specifically addressed herein.

The Applicants thank Examiner Yigdall for participating in a telephone conference on February 12, 2010, to discuss claim amendments to Claim 1. In particular, amendments regarding events that trigger journal entries and the specific parameters of each journal entry were discussed. No agreement was reached. However, the Applicants thank the Examiner for providing helpful comments.

I.   CLAIM OBJECTIONS

The claims were objected to because of minor informalities in Claims 1, 11, 21 and 26. Claims 1, 11, 21 and 26 have been amended to correct these informalities. The Applicants respectfully requests that the Objections to Claims 1, 11, 21 and 26 be withdrawn.

II.   CLAIM REJECTIONS -- 35 U.S.C. § 103

Claims 1, 2, 5-12, 15-22, 25-27 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,687,901 to Imamatsu (*"Imamatsu"*) in view of U.S. Patent No. 6,928,579 to Aija (*"Aija"*). The Applicants respectfully traverse the rejection.

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). The prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka,* 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l. Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (April 30, 2007) (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

Claim 1 recites the unique and nonobvious limitations below with emphasis:

> 1.   A wireless communication device capable of downloading a software update file from a wireless network, said wireless communication device comprising:

- 14 -

a non-volatile memory capable of being re-programmed by sectors, wherein said non-volatile memory stores: 1) a target file to be updated, 2) said downloaded software update file, and 3) a journal comprising a plurality of entries, each of said plurality of entries <u>created upon a successful completion of each operation that updates a</u> ~~containing~~ status information associated with a re-programmed sector of said non-volatile memory<u>, wherein the status information comprises a first parameter configured to indicate a start of re-programming the re-programmed sector, second parameter configured to indicate that previous contents of the re-programmed sector were correctly stored in a save area, and a third parameter configured to indicate successful re-programming of the re-programmed sector;</u>

a random access memory; and

a main processor capable of replacing target code in said target file with replacement code from said downloaded software update file, wherein said main processor creates a first block of replacement code in said random access memory and re-programs a first target sector of said non-volatile memory by storing said first block of replacement code into said first target sector, and wherein said main processor updates a first status information in a first entry in said journal associated with said first target sector, and wherein said main processor is further capable of storing first target code from said first target sector in the save-area of said non-volatile memory prior to storing said first block of replacement code into said first target sector, wherein the journal further comprises information sufficient for a recovery of an error during the replacing of the target code with replacement code through two independently erasable sectors and the save-area sector of non-volatile memory, wherein the journal is configured to be used also in a recovery of an error during the download of the software update file from the wireless network, and wherein upon the error occurring during the download of the software update file, the journal is used to resume the operation of the download of the software update file from the wireless network at the next sequential sector following the last successfully downloaded and saved sector. [Emphasis Added]

The Applicants respectfully submit that *Imamatsu* and *Herle*, taken singularly or in combination, do not teach or suggest the above-emphasized limitations of Claim 1. *Imamatsu* discloses a version management system in which each entry represents a version of the entire

- 15 -

control-software (including every module that may be updated). *Imamatsu*, column 8, lines 5-11. As each operation within a version update is successfully completed, a flag within an entry is updated. *Imamatsu*, column 12, lines 27-31. *Imamatsu* does not teach or suggest creating an entry upon successful completion of each operation that updates a status information associated with a re-programmed sector of said non-volatile memory.

Imamatsu also does not teach or suggest status information that comprises a first parameter configured to indicate a start of re-programming the re-programmed sector, second parameter configured to indicate that previous contents of the re-programmed sector were correctly stored in a save area, and a third parameter configured to indicate successful re-programming of the re-programmed sector, as recited in Claim 1. *Aija* does not provide a disclosure to remedy *Imamatsu*'s deficiencies. Therefore, Claim 1 is allowable over the proposed combination of *Imamatsu* and *Aija*.

Claims 11, 21, and 26 recite limitations that are analogous to the unique and nonobvious limitations emphasized above, with regard to Claim 1. Claims 5-10, 15-20, 25, and 30 depend from Claims 1, 11, 21, and 26. The Applicants have shown that Claim 1 is allowable over the cited references. Therefore, Claims 5-11, 15-21, 25-26, and 30 are also patentable over the cited references for at least the same reasons provided with regard to Claim 1.

Accordingly, the Applicants respectfully request that the § 103 rejection with respect to Claims 1, 5-11, 15-21, 25-26, and 30 be withdrawn.

- 16 -

CONCLUSION

As a result of the foregoing, the Applicants assert that the remaining claims in the Application are in condition for allowance, and respectfully requests that this Application be passed to issue.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@munckcarter.com*.

The Commissioner is hereby authorized to charge any additional fees (including any extension of time fees) connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

MUNCK CARTER, LLP

John J. Mockler

John T. Mockler
Registration No. 39,775

Date: 16 February 2010
P.O. Drawer 800889
Dallas, Texas 75380
Phone: (972) 628-3600
Fax: (972) 628-3616
E-mail: *jmockler@munckcarter.com*